Supreme Court, U.S.
FILED
FEB 18 1993
OFFICE OF THE CLERK

(2)

No. 92-1180

In The

Supreme Court of the United States

October Term, 1992

UNITED STATES OF AMERICA,

Petitioner,

v.

JAMES DANIEL GOOD REAL PROPERTY, ET AL.,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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28 pp

QUESTIONS PRESENTED

1. Does the Due Process Clause require the government to give a homeowner an opportunity for a hearing before seizing a home, when there are no special circumstances which make immediate seizure necessary?

2. Is the civil forfeiture of a home and real property under 21 U.S.C. § 881(a)(7) untimely where, although the governing statutes require forfeitures to be commenced "forthwith" and "without delay" after discovery of the offense, the government waited four and a half years after the seizure of marijuana on the premises, and four years after the owner's conviction in state criminal court, to commence forfeiture?

PARTIES TO THE PROCEEDINGS

The petitioner in this action is the United States of America. The respondent is James Daniel Good, who filed a claim to the defendant real property *res* in the proceedings below.

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BRIEF IN OPPOSITION

James Daniel Good, by and through his undersigned counsel, respectfully submits this brief in opposition to the petition for a writ of certiorari filed by petitioner United States of America.

OPINIONS BELOW

The opinion of the court of appeals, as amended on denial of rehearing, is reported at 971 F.2d 1376. It was reproduced in the Appendix to the petition for a writ of certiorari. The opinions of the district court are not

reported. They were reproduced in the Appendix to the petition for a writ of certiorari.

JURISDICTION

Respondent adopts petitioner's statement of jurisdiction.

STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, the Due Process Clause of the Fifth Amendment, 21 U.S.C. § 881, and 19 U.S.C. §§ 1600-1610 and § 1621 were reproduced in the Appendix of the petition for a writ of certiorari.

STATEMENT

On January 31, 1985, local police, accompanied by an IRS agent, searched the home and real property of claimant James Daniel Good ("Good"), pursuant to a search warrant. They discovered eighty-nine pounds of bulk marijuana, marijuana seeds, and a small amount of hashish oil. (CR 1; CR 29, pp. 51-54, pp. 56-58.)

Good was charged with promoting a harmful drug in the second degree in a criminal complaint issued in state court on June 4, 1985. (CR 29, p. 48.) He pleaded guilty on July 3, 1985, and was pronounced guilty and sentenced on August 7, 1985. (CR 33, p. 76.)

Good was placed on probation and ordered to serve one year in jail. (CR 29, pp. 49-50.) He was also ordered to surrender $3,187 in cash found on the premises in a state court civil forfeiture proceeding. (CR 45, pp. 37-38.)

By August, 1989, Good had served his jail time, had completed all of the special terms of his probation, and had been performing satisfactorily in his probation. (CR 29, pp. 35-36.)

However, on August 8, 1989, four years and six months after the original search, the United States filed a complaint for forfeiture against Good's property. (CR 1.) A Warrant for Arrest of the property was signed by the clerk of the United States District Court on August 8, 1989. (CR 1.) United States marshals seized the property on August 21, 1989. (CR 4.)

The government did not give Good prior notice or an opportunity for a hearing before seizing the home.

At the time of the arrest of the property, it was being leased by Good to tenants. (CR 29, p. 33.) The government allowed the tenants to remain in possession after it searched the home and inventoried the contents, but further rental payments were made to the government. (*Id.*) The government was willing to allow Good to resume occupancy of the property as substitute custodian, but he was unable to do so because of his commitment to return to work abroad for a charitable organization. (*Id.*)

The government has never offered any explanation for the four and one-half year delay between the search of

Good's home and the institution of forfeiture proceedings. The record does not reveal when federal officials responsible for initiating the forfeiture first actually learned of the search and seizure on Good's property because the government refused to answer interrogatories on this issue. *United States v. James Daniel Good Property*, 971 F.2d 1376, 1382 (9th Cir. 1992).

In the district court, Good argued that the forfeiture was not timely filed; that the forfeiture violated the Double Jeopardy Clause as a double punishment; and that he should have been given the opportunity for a hearing before the seizure. (CR 29; CR 37; CR 39; CR 50.) He also argued that the initial search warrant had been invalid because the affidavit upon which the warrant was based did not specify the time frame within which the alleged illegal activities had been observed. (CR 30; CR 46.)

The district court rejected all of Good's contentions. After finding that there was probable cause for forfeiture, it ordered the property to be forfeited to the United States. (CR 52; CR 53.)

The Ninth Circuit Court of Appeals reversed and remanded to the district court. It held that 19 U.S.C. §§ 1602-1604 require federal officials to act promptly upon learning of grounds for forfeiture, but that the record was inadequate to determine when federal officials authorized to seize property (DEA or FBI) had learned of the search and seizure. The court remanded the case to the district court to develop the factual record on this issue. The court of appeals ruled that if the government, on remand, showed its action was timely, summary judgment should be entered against Good.

The court also held that the Due Process Clause of the Fifth Amendment requires the government to give a homeowner an opportunity for a hearing before the seizure of the home, unless there were exigent circumstances, which were not present in Good's case.

The court applied the factors identified by this court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and concluded that, under the particular circumstances presented in this case, the government had not justified the *ex parte* seizure of Good's property. The court distinguished cases involving the seizure of movable property because Good's home could not be easily moved. The court noted that an owner can be prevented from transferring or encumbering real property through less intrusive means than *ex parte* seizure, such as a *lis pendens*, a restraining order, or a bond requirement. Moreover, the unexplained four and one-half year delay undercut the government's assertion that a quick seizure was necessary. Nonetheless, the court ruled that the failure to provide the hearing did not invalidate the forfeiture. It only entitled Good to recovery of rents collected by the government as a result of the *ex parte* seizure.

SUMMARY OF REASONS FOR DENYING THE WRIT

A. Summary of Argument

The government has asked this court to grant a writ of certiorari on two issues: the requirement of a hearing before seizure and the "promptness" requirement of 19 U.S.C. §§ 1602-1604.

The court should not grant certiorari on either issue.

The court of appeals correctly ruled that a pre-seizure hearing should have been held. It followed the guidelines announced by previous Supreme Court decisions, and properly distinguished cases which allowed seizures without prior hearings because the *res* could be moved, or hidden, or in which a hearing was otherwise impractical. The government could not demonstrate any need for immediate seizure without notice when it waited more than four years to institute proceedings. Transfer of the property could have been prevented through less intrusive means. Four circuits have now issued decisions requiring hearings before the seizure of residences; the only circuit court decision cited by the government as conflicting is factually distinguishable and contained no real analysis.

The court of appeals also correctly interpreted 19 U.S.C. §§ 1602-1604, and its interpretation will have positive policy results in the administration of forfeiture law. The Good case involved unusual facts – an unexplained four and one-half year delay. Because of these peculiar facts, this case does not present an issue of recurring significance that warrants consideration by this court. In addition, there is no conflict among the courts of appeal on this issue, and no conflict with prior decisions of this court.

REASONS FOR DENYING THE WRIT

I. The Court of Appeals' Conclusion that the Owner of a Home Must Be Given a Hearing Before Its Seizure By the Government, Unless there are Extraordinary Circumstances, Is Consistent with the Decisions of this Court and Does Not Warrant Review.

This court has consistently held that due process requires that a property owner be given notice and an opportunity to be heard before the government deprives the owner of a significant property interest. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Fuentes v. Shevin*, 407 U.S. 76, 80-82 (1972). There is an exception: the government may act before notice and hearing under "extraordinary circumstances." *Fuentes v. Shevin*, 407 U.S. at 91; *United States v. $8850*, 461 U.S. 555, 562 n. 12 (1983).

This court set out a general test to determine whether a pre-deprivation hearing may be avoided in *Mathews v. Eldridge*. Under the *Mathews v. Eldridge* test, a court must consider (1) the significance of the property interest at stake; (2) the risk of erroneous deprivation given the procedures actually used, as well as the probable value of additional safeguards; and (3) the government's interest in pre-notice seizure. *Mathews v. Eldridge*, 424 U.S. at 335.

In Good's case, the Ninth Circuit followed the *Mathews v. Eldridge* analysis in holding that the circumstances did not permit a departure from the ordinary rule requiring a pre-deprivation hearing. The Ninth Circuit's opinion closely tracked an earlier decision of the Second Circuit, *United States v. Property at 4492 South Livonia Road*, 889 F.2d 1258 (2d Cir. 1989).

First, Good's interest in his home is traditionally one of the property interests most respected by the law. *4492 South Livonia Road*, 889 F.2d at 1264; *United States v. Karo*, 468 U.S. 705, 714 (1984). The actions of the government in entering Good's property, attaching a warrant of arrest to it, taking physical control and possession of the property, and collecting the rents, constituted a significant deprivation of Good's rights. Although the government allowed Good's tenants to remain, this was only as an act of grace on the part of the government: the government did not recognize a right of the tenants to remain, or any right of Good to control the tenants. See *4492 South Livonia Road* at 1265. Good lost his right as lessor to make sure that the property was used in accordance with the terms of the lease. He lost his rights to receive the rents, to terminate the lease in case of breach, to inspect the property, and to re-enter upon the end of the lease term. The seizure also affected, and perhaps breached, Good's obligation to allow his tenants the "quiet enjoyment" of the property. In short, the seizure deprived Good of all rights of ownership. In *Connecticut v. Doehr*, ___ U.S. ___, 115 L.Ed.2d 1, 14, 111 S.Ct. 2105, 2113 (1991), the court recognized that even an attachment of real property is a significant deprivation of a property right. Good suffered a far more severe deprivation when his property was seized.

The government offered no compelling justification for not affording a hearing before the seizure of the home. As the Ninth Circuit noted, "[T]he house is not going anywhere." 971 F.2d at 1384. The government could have prevented transfer or encumbrance through far less restrictive means: a *lis pendens*, restraining order, or a bond. *Id.*; *4492 South Livonia Road* at 1265.

The government obviously was not concerned that the home was the scene of an active drug operation: it waited four and one-half years to move against the property, then let Good's tenants remain. *United States v. James Daniel Good Property* at 1384; *4492 South Livonia Road* at 1265. The government cannot justify a seizure without a hearing by pointing to the policy of using forfeitures to fight drug crimes: that objective can be achieved equally well by seizure *after* a hearing. *4492 South Livonia Road* at 1265.

In its petition for certiorari, the government offers these practical arguments against a hearing: (1) the owner could destroy or damage the property if there were advance warning, (2) seizing agents might be in danger if the owner were tipped off in advance, and (3) the owner might use the hearing to obtain discovery. None of these arguments applies to the facts of this case.

The government had no real concern about a physical threat to Good's property. It allowed Good's tenants to remain and would have allowed Good to resume residence under an occupancy agreement. Good had no desire to harm his property – he has been trying his best to get it back. In any case, it would not necessarily be easier for the owner to damage the property before seizure than after. The government typically does not post U.S. marshals on a round-the-clock watch over seized real property.

The government's second scenario – that a disgruntled owner might shoot it out with seizing agents – is farfetched. It is possible that an owner would resist a seizure, whether it occurs with or without warning. It would

be a most irrational decision for a property owner to match firepower against the United States in defense of the property, but it seems less likely that the owner would make a rash decision *after* a judicial hearing, when the owner has had time to reflect upon the likely consequences and outcome of armed resistance, than it would in the typical seizure, where agents suddenly show up in an attempt to take over the property. Prior notice would eliminate the possibility that an occupant of property might react violently after mistaking an official seizure for a criminal action. In addition, the government had no reason to expect violent resistance from Good, who had pleaded guilty, served his sentence, and was completing probation.

The discovery issue is one that can easily be controlled by a court. In Good's case, civil discovery could not prejudice the government's position in criminal proceedings because Good had pleaded guilty four years earlier. Nothing in the Ninth Circuit's opinion suggests that the government would be required to produce more information at a pre-seizure hearing than a claimant would otherwise be able to obtain in discovery.

The government's petition for certiorari in effect urges the court to create a forfeiture exception to the normal requirements of due process. This court has never created such a blanket exception. It has allowed seizures without a hearing when the property involved was a boat, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), or cash, *United States v. $8850*. The distinction between these cases and the forfeiture of real property is obvious, and was noted by the courts in *United States v. James Daniel Good Property*, and *4492 South Livonia Road*. In

other forfeiture cases where the Supreme Court has allowed seizure of the *res* without a hearing, the *res* was easily moved or hidden. *United States v. James Daniel Good Property* at 1383-1384; *4492 South Livonia Road* at 1265. The *Pearson Yacht* court expressly mentioned the mobility of the yacht as a factor in allowing seizure before a hearing: "[T]he property seized – as here, a yacht – will often be the sort that would be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given." 416 U.S. at 679.

Both *Pearson Yacht* and *United States v. $8850* were decided before 21 U.S.C. § 881(a)(7) was enacted in 1984, which made real property forfeitable for the first time. *United States v. James Daniel Good Property* at 1383. The Supreme Court could scarcely have anticipated when writing opinions such as *Pearson Yacht* and *$8850* that they would be used to justify seizure of real property without a hearing.

It would be an extraordinary departure from this court's prior due process jurisprudence to hold that a seizure of real property may occur without a prior hearing, regardless of the circumstances.

The opportunity for a hearing is also important to prevent an erroneous deprivation of property. Without the hearing, the owner has no chance to present defenses prior to the seizure, such as innocent ownership, and cannot challenge or test the quality of the government's proof.

The government's petition for certiorari argues (at 11) that the Fourth Amendment ". . . rather than the Fifth Amendment's Due Process Clause, should be the point of reference in determining the lawfulness of a seizure in

the forfeiture context." This assertion is at odds with settled law: the Supreme Court has already applied the due process clause in forfeiture cases. *Pearson Yacht; United States v. $8850.*

Four circuits have issued opinions that the seizure of real property without prior notice and a hearing violated the Due Process Clause unless there are exigent circumstances. *4492 South Livonia Road; United States v. James Daniel Good Property; United States v. A Parcel of Land, Appurtenances, and Improvements, known as 92 Buena Vista Ave.*, 937 F.2d 98, 101 (3d Cir. 1991); (*cert. granted* on other issues No. 91-781); *Richmond Tenants Organization v. Kemp*, 956 F.2d 1300, 1307-1308 (4th Cir. 1992) (due process clause requires notice and hearing before eviction of public housing tenants suspected of drug activities, unless there are exigent circumstances.)

The petition for a writ of certiorari cites only one circuit court decision holding that a pre-seizure hearing is *not* needed when a house is seized. *United States v. A Single Family Residence at 900 Rio Vista Blvd.*, 803 F.2d 625, 631-32 (1986). The Ninth Circuit characterized the analysis in *900 Rio Vista Blvd.* as "cursory." 971 F.2d at 1384. This is a fair assessment. The *900 Rio Vista Blvd.* court simply cited *Pearson Yacht* and *United States v. $8850*, without further analysis, deciding (in one paragraph) that a corporate claimant was not entitled to a hearing before the seizure of the house. The corporate claimant held bare legal title to the property; the court expressly stated that the claimant was a front and "strawman" for the beneficial owner, who did not make a claim. 803 F.2d at 629, 631. Therefore, the *900 Rio Vista Blvd.* court did not have occasion to analyze the competing interests involved

when a homeowner challenges the *ex parte* seizure of property.

While the *900 Rio Vista Blvd.* opinion states that a residence was involved, it does not indicate whether anyone actually resided on the property at the time of seizure, whether the corporate claimant leased the property, or anything else about the claimant's relationship to the property at the time of seizure other than its claim to hold legal title. *Cf. United States v. A Leasehold Interest In Property Located at 850 S. Maple*, 789 F.Supp. 1385, 1391-1392 (E.D. Mich. 1992), distinguishing *900 Rio Vista Blvd.* from the eviction of public housing tenants on the grounds, *inter alia*, that it involved a corporate claimant.

In short, the conflict between circuits is not substantial; the cases can be distinguished on their facts.

The general issue of pre-seizure hearings is still undergoing further doctrinal development in the circuit courts. For example, the Second Circuit has held that when many units in an apartment building were actively being used for drug transactions, with the owner's apparent consent, extraordinary circumstances existed which justified seizure without a hearing, to prevent further use of the building as an instrumentality of crime. *United States v. 141st Street Corp.*, 911 F.2d 870, 874-876 (1990), *cert. den.* 111 S.Ct. 1017 (1991).[1]

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[1] The petition for certiorari mistakenly characterizes this decision as based on the property's status as a rental. In fact, the ongoing drug activity was the decisive factor for the court in distinguishing *4492 South Livonia Rd.*; the *United States v. 141st Street Corp.* court recognized that the seizure of a rental building

The courts of appeals will be able to adopt the general due process rules previously expounded by this court to cover the shifting factual circumstances of real property seizures.

II. Whether 19 U.S.C. §§ 1602-1604 Precludes Forfeiture After Unreasonable Delay Does Not Warrant Review By This Court.

The Ninth Circuit also correctly applied 19 U.S.C. §§ 1602-1604 to hold that if the government had unduly delayed in instituting forfeiture, the action must be dismissed.

This is solely an issue of statutory construction. No court has previously discussed the time limitations created by 19 U.S.C. §§ 1602-1604. *James Daniel Good Property* at 1379-1380.

The petition for a writ of certiorari argues that the *Good* decision squarely conflicts with *United States v. $8850*, specifically with footnote 13, (461 U.S. at 563, n.13). There is, in fact, no conflict because a key statute construed by the Ninth Circuit in *Good* – 19 U.S.C. § 1603 – was amended to require prompt reporting *after* the events considered by the court in *$8850*.

In *$8850*, the cash was seized in September, 1975, and judicial forfeiture was commenced in March, 1977. As the *$8850* court itself noted, at the time of the seizure:

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was "a deprivation of a significant property interest," 911 F.2d at 875-876, but held it was justified by the ongoing drug activity. *Id.*

> "19 U.S.C. § 1603 contained no requirement of a prompt report of a seizure by the Customs Service to the United States Attorney for purposes of instituting forfeiture proceedings. As amended in 1978, § 1603 now requires the appropriate customs officer 'to report promptly' to the United States Attorney whenever legal proceedings in connection with such seizure or discovery are required." 461 U.S. at 558, n. 3.

The *$8850* court therefore did not consider or decide the significance of the prompt reporting requirement of § 1603.[2]

In addition, the *$8850* court did not expressly discuss the effect of the various provisions of 19 U.S.C. §§ 1602-1604 requiring prompt governmental action even as they existed at that time.

No direct conflict exists in the courts of appeal on this issue. In *United States v. A Parcel of Land, Appurtenances, and Improvements, known as 92 Buena Vista Ave.*, the Third Circuit stated that an action begun in 1989 for predicate acts discovered in 1986 was timely. The Third Circuit did not discuss or even mention 19 U.S.C.

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[2] The petition for a writ of certiorari claims that the Ninth Circuit had, in *United States v. Two Hundred Ninety-five Ivory Carvings*, 726 F.2d 529, 531 (9th Cir. 1984), "previously recognized . . . that those statutory provisions impose no enforceable standards independent of the Due Process Clause." The government again fails to note that § 1603 was amended to require prompt reporting *after* the seizure and delays complained of in *Two Hundred Ninety-five Ivory Carvings*, and that the court, in the same clause cited by the government, stated that its opinion was limited to "the time of these proceedings." 726 F.2d at 531.

§§ 1602-1604. One cannot find a conflict among circuits when only one circuit has directly addressed an issue.[3]

The decision of the Ninth Circuit is also correct on the merits. The statutory requirements are clear.

First, § 1602 requires that officials responsible for the enforcement of forfeiture laws "report immediately. . . every violation."

Second, § 1603 requires that when a violation is discovered, the customs officers shall "report promptly such seizure or violation to the United States attorney."

Third, § 1604 requires the Attorney General "immediately to inquire" into the facts reported, and "forthwith to cause the proper proceedings to be commenced and prosecuted, without delay . . ."[4]

There can be no doubt over the meaning of these provisions. The government must strictly comply with every provision of the forfeiture laws. *United States v. $38,000 in U.S. Currency*, 816 F.2d 1538, 1545-47 (11th Cir. 1987). As the Eleventh Circuit has held, ". . . strict compliance with the letter of the law by those seeking forfeiture must be required." *United States v. Property at 4880 S.E. Dixie Highway*, 838 F.2d 1558, 1564 (11th Cir. 1988).

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[3] In *United States v. Land & Bldg. at 2 Burditt St.*, 924 F.2d 383, 385 (1st Cir. 1991) the court in *dicta* stated that it doubted that the government was free to initiate forfeiture at any time it chose before the five-year statute of limitations.

[4] The clause in § 1604 requiring the government's attorneys to commence proceedings forthwith when court proceedings are "necessary" refers to the fact that court proceedings are necessary to forfeit property under circumstances when administrative forfeiture is not available. At the time forfeiture was initiated on Good's property, administrative forfeitures could not be used for property, such as Good's, worth more than $100,000, 19 U.S.C. § 1607, § 1610, so court proceedings were necessary.

In *Geppi v. State*, 270 Md. 239, 310 A.2d 768 (Md.App. 1973) the court construed a state forfeiture statute to require dismissal of an untimely forfeiture. The statute at issue provided that when property had been seized which is subject to forfeiture, "proceedings . . . shall be instituted promptly." The statute did not specify a more definite time frame. The court held that an unexplained delay of eight months and eight days was too long to comply with the statutory promptness requirement, and ordered that the seized property be returned to the claimant. 310 A.2d at 772.

Dismissal is the appropriate remedy for non-compliance with statutory time requirements in a forfeiture case. *State v. One 1980 Harley Davidson*, 57 Md.App. 178, 469 A.2d 487, 490-491 (Md.App. 1984); *Geppi v. State; State v. Ellis*, 156 Ga.App. 779, 275 S.E.2d 361 (Ga.App. 1980).

Forfeiture is a harsh sanction, not favored by the law. *United States v. $48,595*, 705 F.2d 909, 914 (7th Cir. 1983); *United States v. One 1957 Rockwell Aero Commander*, 671 F.2d 414, 417 (10th Cir. 1982). Forfeiture statutes must be strictly construed against forfeiture. *United States v. $38,000 in U.S. Currency*. A forfeiture should be allowed "only when within both [the] letter and spirit of the law." *United States v. One 1936 Model Ford V-8 Deluxe Coach*, 307 U.S. 219 (1939).

The *James Daniel Good Property* court also considered, but rejected, an alternative basis for holding the forfeiture

untimely: the concurring opinion in *United States v. Tax Lot 1500*, 861 F.2d 232, 236 (9th Cir. 1989) (Ferguson, J. concurring), which construed 21 U.S.C. § 881(a)(7) as requiring federal drug forfeiture proceedings for real property to be commenced before the termination of state court criminal proceedings, because forfeiture is only available when the property is "used, or intended to be used" for criminal drug activities near the time of forfeiture. *Id.*

The government has not claimed that Mr. Good's property was "used, or intended to be used" to commit a felony violation of Title 21 at any time after January 31, 1985. Under the concurring opinion in *Tax Lot 1500*, the property was no longer subject to forfeiture when forfeiture was commenced.

If this court grants certiorari, it may affirm on any ground for which there is support in the record. *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476 n. 20 (1979). The concurring opinion of *Tax Lot 1500* provides such an alternative ground.

The requirement that the government promptly institute forfeiture actions is good public policy. Seizure and forfeiture are most effective in preventing the continued use of property to commit crimes, or in depriving criminals of financial assets used to commit crimes, if the property is promptly seized and forfeiture proceedings promptly commenced.

Owners of property used in drug crimes would have less time to convert the property to less traceable assets through sale or mortgage. The government's resources would be channeled toward stripping assets from active

law-breakers, rather than from those, like Good, who have completed the rehabilitation process, and become law-abiding citizens. The government would direct its attention to current violators, and not to stale cases like Mr. Good's.

The punitive character of forfeitures cannot be denied. In Good's case, the government is seizing property allegedly used in the commission of a crime more than four and one-half years after the offense, when the individual involved had nearly completed probation. It is in society's interest in promoting the rehabilitation of offenders to make clear the penalties which they must face, so that the offender may discharge his obligations, and go on to a productive life. The government has made a "late hit" on Mr. Good, who must have believed that he had already received his punishment.

The possibility that the government might delay for years after the termination of criminal proceedings before seizing property, can only discourage an owner from investing in the improvement of the property, and may thus blight the property for years. Properties may simply fester.

The only practical objection raised by the government to the interpretation of 19 U.S.C. §§ 1602-1604 adopted in the *Good* decision is that it "would create incentives to investigate possible violations of the law with undue haste." Petition for certiorari at 21. The Ninth Circuit's decision does not require the government to act with undue haste. The court remanded the case to the district court to develop the factual record to determine

whether the government's actions were untimely. There is no reason to think that the district court and circuit court will be unable to scrutinize the factual record in this and other cases to determine whether or not the government acted with due promptness.

In this case, the government waited four and one-half years after the discovery of the offense to begin forfeiture proceedings, for no apparent reason. It is to be hoped that this sort of unexplained delay will rarely occur. The most obvious possible reason – the pendency of criminal proceedings or investigations – cannot possibly apply to Good's case. Criminal proceedings were concluded in August, 1985.[5]

The court of appeals' interpretation of 19 U.S.C. §§ 1602-1604 therefore presents none of the justifications for a writ of certiorari enumerated in Rule 10.1 of the Rules of the Supreme Court. There is no conflict with any other circuit court decision, or any departure from "the accepted and universal course of judicial proceedings." Sup.Ct.R. 10.1(a). It does not involve "an important question of federal law . . . which should be settled by this Court." Sup.Ct.R. 10.1(c). Rather, it involves the straightforward application of a clear statute to egregious and unusual facts. Finally, it is possible that the decision of the court of appeals will not affect the outcome of the case: on remand, the government may still prevail if it demonstrates that it acted promptly after learning of the grounds for forfeiture.

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[5] The government may file, then stay, the civil forfeiture action if the pendency of the criminal action creates discovery problems. *United States v. James Daniel Good Property* at 1382.

CONCLUSION

The petition for a writ of certiorari should be denied.

DATED this 19th day of February, 1993.

Respectfully submitted,

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